

In re Appln. of Hammond
Application No. 09/963,734

REMARKS

Claims 1-10 are pending in the application.

The Office Action rejects claims 1-6 and 8-10 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,460,702 to Hammond ("Hammond '702") and claims 1-20 of U.S. Patent No. 5,931,304 to Hammond ("Hammond '304"). Hammond '702 and Hammond '304 are commonly owned with the present application. A terminal disclaimer has been filed with the present response, and accordingly, the rejection should be removed. The Office Action rejects claim 7 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over either the claims 1-10 of Hammond '702 or claims 1-20 of Hammond '304 in view of U.S. Patent No. 2,324,194 to Campiglia ("Campiglia"). Hammond '702 and Hammond '304 are commonly owned with the present application. A terminal disclaimer has been filed with the present response, and accordingly, the rejection should be removed.

The Office Action rejects claims 1-10 under 35 U.S.C. § 103 as unpatentable over U.S. Patent No. 2,324,194 to Campiglia ("Campiglia") in view of U.S. Patent No. 1,090,553 to Mashek ("Mashek") and First Responder First Aid Kits ("First Responder") and the National Safety Council "First Aid Guide."

The Office Action alleges that Campiglia discloses a first aid kit having "a plurality of compartments arranged in accordion style columnar array." Applicant respectfully disagrees. Campiglia discloses a "moderately flat rectangular bag 10, having vertically disposed partitions" (col. 2, lines 36-39). The term moderately flat does not teach the concept of an accordion type opening. Accordion connotes an expandable opening. The adjective "accordion" is defined as "having folds or bends like the bellows of an accordion" (dictionary.reference.com). Campiglia does not have folds or bends like the bellows of an accordion. Furthermore, Campiglia does not teach or suggest an "accordion style columnar array." Even if one were to modify Campiglia to have accordion type folds, it would not yield

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the present invention, since Campiglia has no teaching of labels, instruction cards within packs, and triage order.

Claim 1 of the present invention includes descriptive labels, instructional cards, and importantly, a specific system of order based on the triage principle. The triage system of order is also claimed in claims 8 and 10 of the present invention. The present invention claims a flexible first aid case including a plurality of compartments arranged in an accordion style columnar array and a plurality of packs and importantly, a specific system of order based on the triage principle. Claim 7 of the present invention is directed to "an accordion style collapsible case." Therefore, Campiglia does not recognize the problem solved by the present invention, that is the elements of a plurality of compartments arranged in an accordion style columnar array and a plurality of packs, etc.

Mashek also has no teaching of labels, instruction cards within packs, and triage order, as in instant claim 1. Claim 1 of the present invention includes descriptive labels, instructional cards, and importantly, a specific system of order based on the triage principle. The triage system of order is also claimed in claims 8 and 10 of the present invention.

The prior art First Responder first aid kits and the National Safety Council "First Aid Guide" do not include the triage system of order of the present invention in any manner or fashion, nor the packs so arranged in said triage order, nor the accordion style flexible carrying case. First, the system presented in the First Responder first aid kits is completely different, includes a video component (p. 1), and is much larger and essentially unportable for the general consumer population. First Responder includes instruction in various types of treatment, but does not teach or suggest the triage system of order of the present invention. Second, the system presented in the National Safety Council "First Aid Guide" includes only a primary survey of the patient, but not the fully developed triage system of order of the present invention.

Since the combination of Campiglia and Mashek (along with First Responder and the First Aid Guide) do not teach or suggest all of the claim limitations, the obviousness rejection should be removed. MPEP 2143.03. The clearly missing elements in all of the prior art references are: the specific system of order based on the triage principle of the present

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invention, and the packs so arranged in said triage order. With reference to the Preliminary Amendment filed September 26, 2001 ("Preliminary Amendment"), obviousness is tested by the combined teachings of the references, and the present Response has outlined what the combination of prior art, as cited by the Examiner, lacks when compared to the present invention. If even one element is missing from the combination of references, said combination cannot support a finding of obviousness. The combination of all prior art references in the present Office Action does not include all of the elements of the present invention. Therefore, the obviousness rejection should be removed.

Importantly, there is no teaching or suggestion to combine Campiglia with the Mashek reference. Mashek discloses a handbag, and does not contemplate any first aid elements. Mashek is not a first aid kit, and thus is nonanalogous art. MPEP 2141.01(a). The Office Action refers to said MPEP requirement, that a prior art reference must be *reasonably pertinent to the particular problem* with which the applicant was concerned. However, Mashek is indeed not pertinent to the problem addressed by the claims of the present invention. The present invention claims a flexible first aid case including a plurality of compartments arranged in an accordion style columnar array and a plurality of packs and importantly, a specific system of order based on the triage principle. Mashek is silent with respect to the problem the Applicant is seeking to solve. Therefore, Mashek does not qualify as reasonably pertinent prior art. X

Additionally, the Examiner relies on Mashek to show the general knowledge available in the art. However, the Examiner has not clearly defined the art, and this must be clearly delineated. MPEP 2141.01(a). The art of the present application is first aid kits, not handbags. Applicant disagrees that the broad designation of "carry-on bag" assigned by the Examiner is adequate to properly join Mashek and Campiglia. In the universe of bags, one cannot travel from Mashek to Campiglia, since Mashek doesn't even recognize the problem, that is the need for a first aid kit. Mashek certainly cannot recognize the need for a first aid kit having the elements of a plurality of compartments arranged in an accordion style columnar array and a plurality of packs.

Campiglia does not recognize a need for a first aid kit having a plurality of compartments arranged in accordion style columnar array. Therefore, Campiglia cannot

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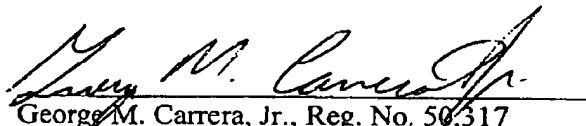
suggest its combination with Mashek. MPEP 2144. The general knowledge available in the art cannot suggest the combination because Campiglia is directed to first aid kits and Mashek is directed to handbags. The Examiner is respectfully reminded that analogous prior art is art that is reasonably pertinent to the problem addressed by the claims. MPEP 2141.01(a). Therefore, the Examiner is either relying on impermissible hindsight or personal knowledge in combining Campiglia with Mashek. If the Examiner argues that impermissible hindsight has not been used, then the Examiner must be relying on personal knowledge. Accordingly, the Applicant respectfully requests that the Examiner provide evidence of this knowledge in an affidavit as required in 37 CFR 1.104(d).

As stated above, claims 1, 8 and 10 of the present invention include a specific system of order based on the triage principle. None of the prior art includes this element, whether Campiglia, Mashek, First Responder, or the First Aid Guide. Accordingly, the rejection of claims 8-10 should be removed.

The Examiner make reference to claims 16-18. Since there are no claims 16-18 pending in the present application, the rejection should be removed.

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,



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